

Re: Request for Meet & Confer on ESI and Depositions

Stoughton, Corey <CStoughton@legal-aid.org>

Wed 9/1/2021 10:13 AM

To: Jacobs, Elissa (Law) <ejacobs@law.nyc.gov>; England, Travis <Travis.England@ag.ny.gov>; DiSeno, Anthony (Law) <adiseno@law.nyc.gov>; Weiss, Dara (Law) <daweiss@law.nyc.gov>

Cc: wood@klflaw.com <wood@klflaw.com>; AG-NYPDLitigation <AG.NYPDLitigation@ag.ny.gov>; PayneLitigationTeam@nyclu.org <PayneLitigationTeam@nyclu.org>; Andrew Stoll <astoll@stollglickman.com>; Sow-Legal <Sow-Legal@blhny.com>; sierrateam@moskovitzlaw.com <sierrateam@moskovitzlaw.com>

Elissa and Anthony,

We are following up on our Monday request for a meet and confer this week regarding the August 6, 2021 Rule 30(b)(6) deposition notice and ESI. As noted in my email from Monday, we need to confer over whether Defendants will produce any witnesses in response to that notice. For email ESI, Anthony committed last week to getting us those answers (or at least giving us dates when we would have documents in hand) early to mid-this week. We are long past the time we should have had these documents in hand. It is very troubling that you are now moving that agreed upon deadline. We need an immediate meet and confer on timing of the ESI production, in addition to the underlying issues (please note as well that our ESI protocol also requires that you give us the kind of information we're asking for).

The group would also like to add to the agenda for the next meet and confer the following matters: Defendants' inadequate responses to Ints. 2-6, 10-11, and 14; improper privilege designations of DOI interviews; and the lack of ARGUS or aviation footage in Defendants' productions. There are also some issues from our last omnibus meet and confer that Defendants have not met their commitments on and we will follow up on those separately.

Please let us know your availability today, Thursday and Friday for a meet and confer on these issues. At that time, we can schedule the meet and confer on the issues identified by Judge Gorenstein.

Corey

From: Jacobs, Elissa (Law) <ejacobs@law.nyc.gov>

Sent: Tuesday, August 31, 2021 4:14 PM

To: England, Travis <Travis.England@ag.ny.gov>; Stoughton, Corey <CStoughton@legal-aid.org>; DiSeno, Anthony (Law) <adiseno@law.nyc.gov>; Weiss, Dara (Law) <daweiss@law.nyc.gov>

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Travis,

With regards to the ESI, we are in the process of reviewing a sample of the populations that we have collected, and will be in a better position to have that discussion next week once that is completed.

As to the depositions, we do in fact expect to move. However, we have been slightly slowed down due to a health issue from one of our ACCs which has caused a delay.

As for Judge Gorenstein's Order, I am working on getting ensuring we have someone knowledge of the system who can participate in our conversation. The person with the most knowledge is out of the office this week, so again, it may be best to have this conversation early next week. I will let you know when I have information on their timing.

Elissa Jacobs

From: England, Travis <Travis.England@ag.ny.gov>

Sent: Tuesday, August 31, 2021 3:54 PM

To: Stoughton, Corey <CStoughton@legal-aid.org>; Jacobs, Elissa (Law) <ejacobs@law.nyc.gov>; DiSeno, Anthony (Law) <adiseno@law.nyc.gov>; Weiss, Dara (Law) <daweiss@law.nyc.gov>; Robinson, Amy (LAW) <arobinso@law.nyc.gov>; Lax, Joshua (Law) <jlax@law.nyc.gov>; Ryan, Erin (LAW) <Eryan@law.nyc.gov>

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Subject: [EXTERNAL] Re: Request for Meet & Confer on ESI and Depositions

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Elissa & Anthony -

In addition to the topics identified below, we would like to also discuss the issues of Defendants' specific burdens in producing the BWC logs and the way Defendants will elect to provide the helmet log information to Plaintiffs, as Judge Gorenstein specified in his Order yesterday afternoon:

The defendants should be prepared to answer during the phone call all reasonable questions regarding the specific burdens they assert. To this end, the defendants are encouraged to allow an individual with expertise to participate in the call. If agreement cannot be reached, the dispute may be presented again in the form of a joint letter. It is recommended that the parties attach to any such individual with knowledge of the specific burdens at issue. As to the request for the helmet index, defendants must choose one of these options: (1) respond to any inquiry regarding helmet numbers within one business day or (2) provide the index under a confidentiality order. As to the second option, it would be acceptable to have the information provided to two of plaintiffs' attorneys, who would have the responsibility to respond to requests from their colleagues and who would undertake to safeguard (and not to otherwise distribute) the index.

As Corey requested, please let us know times that work for Defendants.

Thank you,

Travis

Travis W. England | Deputy Bureau Chief

New York State Office of the Attorney General, Civil Rights Bureau

28 Liberty St., New York, NY 10005

(212) 416-6233 | travis.england@ag.ny.gov | www.ag.ny.gov

Pronouns: he/his/him

From: Stoughton, Corey <CStoughton@legal-aid.org>

Sent: Monday, August 30, 2021 5:48 PM

To: Jacobs, Elissa (Law) <ejacobs@law.nyc.gov>; undefined <adisenso@law.nyc.gov>; Weiss, Dara (Law) <daweiss@law.nyc.gov>; Robinson, Amy (LAW) <arobinso@law.nyc.gov>; jlaw@law.nyc.gov <jlaw@law.nyc.gov>; eryan@law.nyc.gov <eryan@law.nyc.gov>

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Subject: Request for Meet & Confer on ESI and Depositions

[EXTERNAL]

Dear Elissa and Anthony,

I write on behalf of all plaintiffs to request a meet and confer this week, as soon as possible, on the related topics of electronic discovery, the status of plaintiffs two pending 30(b)(6) deposition notices, and the further scheduling of higher-level depositions. Please let us know your availability before the end of the week for a meet and confer on the following matters.

Electronic Discovery

Based on last week's meet and confer, the City has decided to review all search term hits in lieu of giving us a hit list and agreed to tell us this week when we can expect production of this material. As we discussed last week, we needed these documents months ago, and the City's failure to even begin producing them is now delaying necessary depositions. In order to move things forward, we request the following information:

1. A total number of hits, so we can understand any burden you're asserting.
2. What your weekly review capacity is (e.g., once production starts, how many documents a week can you commit to getting us).
3. When you will *start* producing documents.
4. When you will be done producing *all* responsive emails (and when you will be producing a privilege log).

Can you get us this information by Wednesday close of business and provide meet and confer time for Thursday and Friday to discuss your responses?

Rule 30(b)(6) depositions and depositions of higher-level witnesses

With regard to the first notice served on July 2, as Ms. Frick noted in her email following the August 25 meet and confer, the City has made clear its position that it categorically objects to both the nature and scope of each topic in plaintiffs' notice, refuses to produce any witnesses in response to that notice and intends to move to quash the notice in its entirety. This is notwithstanding that the City has not presented any specific objections that would allow us to further narrow the scope of those demands, and that plaintiffs demonstrated a willingness to delay the 30(b)(6) deposition for the portion of Topic 5 that pertains to Defendants' email ESI until after the production of emails and other ESI. On that basis, as we noted during the meet and confer, we are at an impasse and motion practice is required.

During our August 18 meet and confer, Plaintiffs advised that they would move to compel if the City did not make its motion to quash within 7 days. While you requested last week's meet and confer to ensure that all grounds for Defendants' motion were properly exhausted, that should not serve as a reason to continue delaying its motion and ultimately delaying all progress on scheduling 30(b)(6) depositions. Please confirm that the City will be moving to quash Plaintiffs first Notice of 30(b)(6) deposition by this Wednesday, September 1. Otherwise, Plaintiffs intend to move to compel the production of 30(b)(6) witnesses.

With regard to the second notice served on August 6, we would like to meet and confer as soon as possible whether and when you will produce witnesses relating to that notice, and would add that to the agenda for our next meet and confer, but no later than this week.

Overall, we are very concerned that we are approaching September and the City has not agreed to produce a single 30(b)(6) witness. This is particularly concerning as the City's failure to produce any ESI information to date has made it difficult to proceed with other high-level fact depositions, posing a significant challenge to the scheduling order in this case. As we discussed in last week's meet and confer, in the spirit of cooperation we will still endeavor to name some higher-level fact witnesses we can depose without full production of documents, but the City's failure to timely produce documents that should have been produced by July 31 cannot be a reason to compel plaintiffs to take depositions without adequate preparation. We hope we can resolve these pressing issues as quickly as possible.

In addition to these topics, Mr. Stoll has asked me to add to the agenda for the next meet and confer the outstanding requests by Plaintiff Yates to identify certain officers, which I understand you've been corresponding about with Mr. Stoll.

Sincerely,

Corey Stoughton



Corey Stoughton

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